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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

MM DOCKET NO. 92-207

APPLICATIONS OF
DIXIE BROADCASTING, INC.

For Renewal of Licenses of Stations
WHOS (AM) / WDRM (FM)

DECATUR, ALABAMA

MAR 18 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
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OFFICE OF THE SECRETARY

In the matter of:

APPLICATIONS OF
DIXIE BROADCASTING, INC.

DECATUR, ALABAMA

MM Docket No. 92-207

The above-entitled matter come on for admissions session pursuant to Notice before Arthur R. Steinberg, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3, on Wednesday, February 17, 1993, at 2:01 p.m.

APPEARANCES:

On behalf of Dixie Broadcasting Incorporated

THOMAS SCHATTENFIELD, Esquire;
GERALD P. McCARTIN, Esquire
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

On behalf of Mass Media Bureau:

GARY SCHONMAN, Esquire;
JAMES SHOOK, Esquire
2025 M Street, N.W., Suite 7212
Washington, D.C. 20554

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I N D E X

E X H I B I T S

<u>Judge's</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
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Mass Media Bureau

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Dixie Broadcasting, Inc. (DBI)

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Admissions Session began: 2:01 p.m.

Admissions Session Ended: 4:20 p.m.

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P R O C E E D I N G S

JUDGE STEINBERG: We are on the record now. This is the commencement of the hearing in the Decatur, Alabama, renewal proceeding, Docket No. 92-207. This is the day I scheduled for an admissions session and notification of witnesses desired for cross-examination. Let me take the appearances for Dixie Broadcasting Incorporated.

MR. SCHATTENFIELD: Thomas Schattenfield and Gerald McCartin from the law firm of Arent, Fox, Kintner, Plotkin and Kahn.

JUDGE STEINBERG: For the Chief, Mass Media Bureau?

MR. SHOOK: James Shook and Gary Schonman.

JUDGE STEINBERG: Okay. I have a couple of preliminary matters. The first one I have got is Dixie's motion to reschedule exchange date. Let me just ask Bureau counsel if they have had an adequate opportunity to review all of Dixie's exhibits.

MR. SHOOK: We have.

JUDGE STEINBERG: Okay. Do you have any objection to their motion?

MR. SHOOK: No, Your Honor, we don't.

JUDGE STEINBERG: Okay. So it is granted nunc pro tunc. I am not going to issue an order on that. I don't think it is worth the paper. So if this ever becomes a matter of serious dispute, you can refer to the transcript of the

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1 record for the ruling. But let the record reflect, tongue in
2 cheek.

3 Okay. Now the second thing I want to do is remind you
4 that whatever happens to the exhibits today, be they received
5 or not received or modified, the reporter is going to take
6 them back with her and then send them to the Commission.
7 Whoever is here next Tuesday is not going to bring the
8 exhibits back. So when we convene with live witnesses next
9 Tuesday -- live as opposed to dead witnesses. When we convene
10 next Tuesday with the witnesses, bring copies of your exhibits
11 with you to show the witnesses, because mine are all marked
12 up, and the reporter won't have extra copies. That is just a
13 reminder.

14 The third thing that I have is, DBI's exhibits contain
15 blank pages. I call them certification pages, the attachment
16 statement is being provided under penalty of perjury.

17 MR. SCHATTENFIELD: The front page, you mean?

18 JUDGE STEINBERG: Pardon me?

19 MR. SCHATTENFIELD: The front page?

20 JUDGE STEINBERG: Yes, I guess it is the sponsorship
21 page, whatever you want to call it. I don't consider that --
22 do you consider that a fatal flaw?

23 MR. SHOOK: No, Your Honor.

24 JUDGE STEINBERG: Okay. I don't consider it a fatal
25 flaw either. Whatever action we take today is subject to

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1 | executed copies of those things being brought in on Tuesday,
2 | or if the witness is going to be here, you put the witness on
3 | the stand and you go through the usual spiel with the witness.

4 | MR. SCHATTENFIELD: You confuse me greatly, because we
5 | discussed this. I thought you meant that we hadn't put a page
6 | 1 there --

7 | JUDGE STEINBERG: No, no, no, no.

8 | MR. SCHATTENFIELD: We discussed page 1, 2, 3.

9 | JUDGE STEINBERG: Okay. Do you want me to start again?
10 | No. Okay, do you --

11 | MR. SCHATTENFIELD: I understand now.

12 | JUDGE STEINBERG: Okay, yes. So just -- that is not
13 | any ground for objecting to an exhibit. Just bring along the
14 | pages to give to the -- the executed copies, the original and
15 | a duplicate, to give to the reporter on Tuesday. Or if the
16 | witness is here, you can have the witness make the statement
17 | on the stand.

18 | JUDGE STEINBERG: And the last thing that I want to mention is from

1 MR. SHOOK: Your Honor, we do have a copy of that, and
2 I believe that you also, and Dixie also has a copy of that.

3 JUDGE STEINBERG: Okay.

4 MR. SHOOK: Our copy happens to be dated. We neglected
5 to put it in our exhibits, but we do have it. We can
6 photocopy it and then distribute it so that everyone has the
7 appropriate number of copies.

8 JUDGE STEINBERG: Yes. Why don't you do that next
9 Tuesday?

10 MR. SHOOK: All right.

11 MR. SCHATTENFIELD: We discussed that when we met with
12 you.

13 JUDGE STEINBERG: You know, it seems like we have got a
14 nice package of everything. And as long as we have
15 everything, we may as well have that too, since it was
16 referred to. If it wasn't referred to -- it is referred to
17 and it is quoted.

18 MR. SHOOK: Okay.

19 JUDGE STEINBERG: The second thing is a copy of a
20 January 22, 1992, letter agreement with the NAACP referred to
21 in DBI Exhibit 5 at paragraph 10. And, again, that is a
22 matter of -- I mean, there may be objections to the entirety
23 of Exhibit 5, for various and sundry reasons. I don't know.
24 But as long as you mentioned it, you may as well have that as
25 an attachment, unless there is some kind of confidentiality

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1 provision.

2 MR. SCHATTENFIELD: There is none.

3 JUDGE STEINBERG: Okay. Those are the two things that
4 I noticed. Maybe other things will come up. But is there
5 anything that you guys want to do preliminarily? Or do want
6 to just right to the --

7 MR. SCHATTENFIELD: What I wanted to do -- and I spoke
8 to my colleagues across the room -- I would like to enter into
9 a stipulation with them, if it is a fact, that Dixie over its
10 numerous years of operating, of its many years of operation in
11 Decatur, Alabama, has a spotless record before the FCC. That
12 is truly a negative, and I don't know, unless we get a
13 stipulation.

14 JUDGE STEINBERG: Okay. Are you talking about notices
15 of apparent liability and letters of admonition and
16 complaints?

17 MR. SCHATTENFIELD: Yes.

18 JUDGE STEINBERG: Stuff like that?

19 MR. SCHATTENFIELD: Yes, citations. That's right.

20 JUDGE STEINBERG: If they are willing to enter into
21 it --

22 MR. SCHATTENFIELD: Otherwise, I could have somebody go
23 down to the Commission and have them testify, but I think it
24 would be easier if they could look and confirm if that is
25 right, and that is an easy stipulation.

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1 JUDGE STEINBERG: Well, that is up to them what they
2 want to do. You know, there might be a relevance argument. I
3 don't know. But it seems to me that the crux of the case is
4 the candor of the licensee in dealing with the Commission with
5 respect to a certain specific incident. And if the licensee
6 is in compliance with Commission rules and regulations, and if
7 the licensee has a spotless record of complying with

1 MR. SHOOK: At this stage, we simply don't know.

2 MR. SCHATTENFIELD: Well, I know that.

3 JUDGE STEINBERG: Okay. Why don't we get to the
4 exhibits? Who wants to go first?

5 MR. SCHATTENFIELD: Since Mr. Schonman is leaving at 3,
6 do you two guys want to go first? That should go fairly fast
7 anyhow. Let's get it out of the way. Go ahead.

8 MR. SHOOK: That's fine.

9 JUDGE STEINBERG: Any way you want to do it is okay
10 with me. There is a way of expediting matters here, which I
11 am going to suggest. The Bureau exchanged an exhibit index,
12 and the exhibit index contains the names, the titles of all of
13 their exhibits, their 17 exhibits. It was prepared at my
14 suggestion. I called them up and said, "Can you do one of
15 these so that we don't have to be leafing through documents if
16 we are looking for something specific?" Why don't I make the
17 Bureau exhibit index Judge's Exhibit No. 1, and we will
18 consider that the identification of all of the exhibits, but
19 we need numbers of pages.

20 (The document was marked for
21 identification as Judge's Exhibit
22 No. 1.)

23 MR. SCHATTENFIELD: I also -- there is something, a
24 term of art that is referred to by Mr. Van Horn, 13, 14 and
25 15.

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1 JUDGE STEINBERG: Right.

2 MR. SCHATTENFIELD: They have all-station memo. That
3 is referred to as an all-client memo, which would not make a
4 big, a bit of difference.

5 JUDGE STEINBERG: Right. So we can change it to
6 all-client memo.

7 MR. SCHATTENFIELD: Mr. Van Horn in his testimony
8 refers to it.

9 JUDGE STEINBERG: Yes. So why don't we -- have you got
10 two copies of that that you can give to the reporter, of the
11 index? Why don't we make that Judge's Exhibit No. 1.

12 (The document previously identified as
13 Judge's Exhibit No. 1 was received into
14 evidence and made a part of the record
15 thereof.)

16 JUDGE STEINBERG: Okay. And we will change Nos. 13, 14
17 and 15 from "All-Station Memo" to "All-Client Memo." And I
18 know that Mr. Van Horn -- I know what his testimony was with
19 respect to whether Dixie was sent these or received them.
20 That is something that probably would have to be established
21 through Mr. Bramlett.

22 Let me just read the number of pages that I have got
23 and see if anybody has got any different numbers. Exhibit 1
24 is 203 pages. Mass Media Bureau. Wrong list, wrong sheet.
25 Let me start again. Mass Media Bureau Exhibit No. 1 is six

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1 | pages?
2 | MR. SCHONMAN: That is correct.
3 | JUDGE STEINBERG: No. 2 is 24 pages?
4 | MR. SCHONMAN: That is correct.
5 | JUDGE STEINBERG: No. 3 is one page?
6 | MR. SCHONMAN: Yes.
7 | JUDGE STEINBERG: No. 4 is 33 pages?
8 | MR. SCHONMAN: I'm sorry. No. 4?
9 | MR. SCHATTENFIELD: Yes. No. 4 is 33 pages?
10 | MR. SCHONMAN: Exhibit No. 4 is 34 pages.
11 | JUDGE STEINBERG: Okay.
12 | MR. SCHONMAN: There is a certificate of service at the
13 | end.
14 | JUDGE STEINBERG: Thirty-four pages. No. 5 is eight
15 | pages?
16 | MR. SCHONMAN: Correct.
17 | JUDGE STEINBERG: No. 6 is two pages?
18 | MR. SCHONMAN: Yes.
19 | JUDGE STEINBERG: No. 7 is 14 pages?
20 | MR. SCHONMAN: Yes.
21 | JUDGE STEINBERG: No. 8 is four pages?
22 | MR. SCHONMAN: It is.
23 | JUDGE STEINBERG: No. 9 is two pages?
24 | MR. SCHONMAN: Correct.
25 | JUDGE STEINBERG: No. 10 is nine pages?

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1 MR. SCHONMAN: Correct.

2 JUDGE STEINBERG: No. 11 is 310 pages?

3 MR. SCHONMAN: Every which page I counted, yes.

4 JUDGE STEINBERG: No. 12 is 10 pages? We appreciate

5 your counting that, Mr. Schonman, too.

6 MR. SCHONMAN: Correct. Thank you, Your Honor.

7 JUDGE STEINBERG: Exhibit 13 is 58 pages?

8 MR. SCHONMAN: You said 58, Your Honor?

9 MR. SCHATTENFIELD: That is what she said.

10 JUDGE STEINBERG: Yes. Why don't we go off the record?

11 You can count them, because I noticed that my copy, my legal

12 tech numbered.

13 (Off the record.)

14 (Back on the record.)

15 JUDGE STEINBERG: Okay. No. 13 has 58 pages? I think

16 Mr. Schonman and Mr. Shook have checked and that was correct.

17 Is that correct?

18 MR. SCHONMAN: Yes.

19 MR. SHOOK: That is correct.

20 JUDGE STEINBERG: No. 14 is two pages?

21 MR. SCHONMAN: Correct.

22 JUDGE STEINBERG: No. 15 is 16 pages?

23 MR. SCHONMAN: Correct.

24 JUDGE STEINBERG: No. 16 is one page?

25 MR. SCHONMAN: Correct.

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1 JUDGE STEINBERG: And No. 17 is five pages?

2 MR. SCHONMAN: Correct.

3 JUDGE STEINBERG: Why don't we -- I will mark ~~for~~
4 identification Mass Media Bureau Exhibits 1 through 17 as they
5 are described in Judge's Exhibit 1 and with the page numbers
6 or the number of pages that we just put on the record. Those
7 are all identified.

8 (The documents were marked for
9 identification as Mass Media Bureau
10 Exhibit Nos. 1 through 17.)

11 MR. SCHONMAN: The Bureau requests that they be
12 received into the record.

13 JUDGE STEINBERG: Okay. Can we do it all once, or do
14 you have any objections to any of them?

15 MR. SCHATTENFIELD: I don't really have a lot of
16 objections. I have some comments. I don't have any problem
17 with our all-client memos, as long as later on they are
18 subject to being stricken if --

19 JUDGE STEINBERG: If they are not tied in.

20 MR. SCHATTENFIELD: Or if the client didn't read them
21 or didn't get them. I don't know, whatever. If that is the
22 case, we can always make an appropriate motion. Exhibit 16, I
23 don't understand what the Bureau's purpose is of putting in
24 Mr. Van Horn's --

25 JUDGE STEINBERG: Well, why don't we -- let's just take

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1 -- do you have any objections? We have gone up through 1
2 through 15. Do you have any objections to 1 through 15?

3 MR. SCHATTENFIELD: I don't believe so, as long as they
4 are accurate reproductions of the documents that have been
5 exchanged here in the file, which I believe they are. I have
6 not compared them page to page, but I assume that they are.

7 JUDGE STEINBERG: Okay. Let me receive Mass Media
8 Bureau Exhibits 1 through 15. Okay. Now, and 13, 14 and 15
9 have to be tied in.

10 (The documents previously identified as
11 Mass Media Bureau Exhibit Nos. 1 through
12 15 were received into evidence and made
13 a part of the record thereof.)

14 JUDGE STEINBERG: Now could we go up to No. 16?

15 MR. SCHATTENFIELD: Yes.

16 JUDGE STEINBERG: Okay. Do you have any objection to
17 17?

18 MR. SCHATTENFIELD: No.

19 JUDGE STEINBERG: Okay. So Mass Media Bureau Exhibit
20 17 is received.

21 (The document previously identified as
22 Mass Media Bureau Exhibit No. 17 was
23 received into evidence and made a part
24 of the record thereof.)

25 JUDGE STEINBERG: This is -- I am sort of doing this

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1 wholesale.

2 MR. SCHATTENFIELD: I would like to --

3 JUDGE STEINBERG: Okay. Now we are up to 16.

4 MR. SCHATTENFIELD: Well, I do have one question about
5 17.

6 JUDGE STEINBERG: Oh, sure.

7 MR. SCHATTENFIELD: What is the purpose of 17? I know
8 it is a filing. What is the relevance in this proceeding,
9 just so that I get some understanding? I am not going to
10 object, but I would like to know.

11 MR. SHOOK: Well, it is a statement of the licensee
12 that was prepared at the very end of the previous license
13 term, the 1979 to 1982 license term. And the EEO program
14 generally serves not only to describe what it is that the
15 station has done, but also gives the Commission an indication
16 of what it is that the station will do. So we believe what we
17 have here is a statement that we should question Dixie about
18 to determine what, if any, of the EEO practices that it
19 employed in late 1981 and to early 1982 were carried over; and
20 if they weren't carried over, why weren't they carried over?

21 MR. SCHATTENFIELD: Mr. Shook has answered my question.
22 Thank you, Mr. Shook.

23 JUDGE STEINBERG: Okay. Now let's get back to No. 16.

24 MR. SCHATTENFIELD: Sixteen.

25 JUDGE STEINBERG: And what was your question? Did you

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1 have a question?

2 MR. SCHATTENFIELD: Yes, I did.

3 JUDGE STEINBERG: Or did you have an objection?

4 MR. SCHATTENFIELD: No, I just -- I don't know what the
5 purpose is, what the relevance is. And if I could be advised,
6 I might make an objection or not. I just don't know what it
7 is in there for.

8 MR. SHOOK: Well, we have two issues in this case. One
9 is an affirmative-action issue. The other is a misrepresen-
10 tation and lack-of-candor issue. We believe that this
11 document here is relevant or may be relevant to setting the
12 stage for actions of Mr. Bramlett later on when he came to
13 learn that the fears expressed in this letter by Mr. Van Horn

1 Mass Media Bureau Exhibit No. 16 was
2 received into evidence and made a part
3 of the record thereof.)

4 JUDGE STEINBERG: And that takes care of the Bureau's
5 exhibits. Did I miss any?

6 MR. SCHATTENFIELD: They are all there.

7 MR. SHOOK: You know, the only other exhibit that we
8 will have is No. 18, which is that January 24 letter that was
9 referred to previously.

10 JUDGE STEINBERG: Yes, that letter. Sure. Okay. Now
11 I don't think we can do DBI's exhibits wholesale.

12 MR. SCHATTENFIELD: No, unless the Bureau has no
13 objections, in which case we could --

14 JUDGE STEINBERG: Right, unless the Bureau has no
15 objections.

16 MR. SHOOK: I'm sorry, Mr. Schattenfield.

17 MR. SCHATTENFIELD: Don't be sorry.

18 JUDGE STEINBERG: Okay. Let's take them one at a time.

19 MR. SCHATTENFIELD: I like to do retail business
20 instead of wholesale, I guess.

21 JUDGE STEINBERG: All right.

22 MR. SCHATTENFIELD: No, I don't. I don't know why I
23 said that!

24 JUDGE STEINBERG: The reporter needs two copies of the
25 exhibits.

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1 COURT REPORTER: Do you have copies for me?
2 MR. SCHATTENFIELD: I will.
3 COURT REPORTER: Oh, you don't have --
4 JUDGE STEINBERG: Oh, he is going to -- are you going
5 to cart them over one at a time?
6 MR. SCHATTENFIELD: Well, I thought that would be
7 easier.
8 COURT REPORTER: Oh, it doesn't matter.
9 MR. SCHATTENFIELD: Whichever is more convenient for
10 her. I have got two sets.
11 JUDGE STEINBERG: Okay. Why don't you just cart over
12 all two sets at the same time then?
13 MR. SCHATTENFIELD: Okay. I can do that. Stay where
14 you are. I have to hand them over or they will fall out of my
15 hands.
16 JUDGE STEINBERG: They are kind of slippery. I am
17 talking about the covers, let the record reflect. And not,
18 you know --
19 MR. SCHATTENFIELD: There is 1 through 9, and I have
20 two copies of each.
21 COURT REPORTER: Thank you.
22 MR. SCHATTENFIELD: Two record copies. Let the record
23 show I have handed the reporter two sets of DBI Exhibits 1
24 through 9, and these are exhibits which will be verified
25 either by statement of the sponsoring witness. If that

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1 witness is not called for cross-examination, or that by the
2 hearing date, which is now scheduled for next Tuesday, the
3 23rd, or if the witnesses are called for examination, they
4 will attest to the exhibits when they take the stand. The
5 first exhibit, DBI Exhibit 1, statement of J. Mack Bramlett.

6 JUDGE STEINBERG: Okay. It is 203 pages in length, and
7 let me ask Mr. Schonman. Did you number these pages too?

8 MR. SCHONMAN: No, thank goodness.

9 JUDGE STEINBERG: Okay. The document described will be
10 marked for identification as DBI Exhibit 1. Just a little
11 mid-afternoon humor there.

12 (The document was marked for
13 identification as DBI Exhibit No. 1.)

14 JUDGE STEINBERG: Okay. Do you want to offer it, or do
15 you want to mark them all and then offer them individually?
16 It doesn't matter to me.

17 MR. SCHATTENFIELD: I guess it would be easier just to
18 do one at a time.

19 JUDGE STEINBERG: Okay.

20 MR. SCHATTENFIELD: I hereby offer into evidence what
21 has been marked for identification as DBI Exhibit 1.

22 JUDGE STEINBERG: Okay. Any objections?

23 MR. SCHONMAN: Yes, Your Honor. The first objection is
24 on page 2, five lines from the bottom. Essentially, it is in
25 the middle of the sentence.

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1 JUDGE STEINBERG: "Very carefully"? "Very careful"?

2 MR. SCHONMAN: "And I was very careful to be
3 nondiscriminatory with respect to job openings. This was not
4 difficult, as I don't discriminate and never have." The
5 Bureau would object to that phrase and the following sentence
6 as irrelevant.

7 JUDGE STEINBERG: Well, Mr. Schattenfield?

8 MR. SCHATTENFIELD: I think it is the heart of this
9 case, Your Honor, whether Mr. Bramlett discriminates, has dis-
10 criminated or will discriminate. That is what he was charged
11 with by the NAACP, and that has been what has been in his craw
12 from the minute he saw that and heard this, and it is an
13 obsession with him. He was very hurt, and he was physically
14 ill when he saw it, and that is the road that he was marching
15 down. That was his mindset. Whether he should have or
16 shouldn't have, that is beside the point. That is what it
17 was, and that is what he is telling you here. Now if the
18 Bureau wants to show that he does discriminate and come in
19 with evidence, fine. But that is at the heart of DBI's case,
20 the very heart.

21 MR. SCHONMAN: Your Honor, the Bureau would submit that
22 there are two issues in this hearing. One, of course, is a
23 misrep and lack-of-candor issue. The other issue is an EEO
24 issue. There is not an allegation as such that Dixie or
25 Mr. Bramlett discriminated. There is an EEO issue. And the

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1 information contained in the phrase and the following sentence
2 that I have described simply do not relate to either of the
3 issues that are being tried in this case.

4 JUDGE STEINBERG: I am going to overrule the objection.
5 I think that this is -- I think you have to take the man as a
6 whole and his state of mind as a whole. You can certainly
7 question him on what he believes this hearing is all about.
8 He may believe it is about allegations that he discriminated.
9 He may believe it is about allegations that he made
10 misrepresentations. I don't know what the answer to that is
11 going to be, but I think this is part and parcel of what his
12 general state of mind is about this whole thing. At least
13 that the way I, from reading all of the documents, and this is
14 what I perceive this to be, merely a description of what his
15 state of mind as to what this whole thing is about.

16 MR. SCHONMAN: Well, Your Honor, then keeping that in
17 mind, I would then renew my objection to that complete
18 sentence, "This was not difficult, as I don't discriminate and
19 never have." That would be conclusory.

20 JUDGE STEINBERG: Well, it is also state of mind. He
21 may think he doesn't, but you may -- well, if it is relevant,
22 you may show that he actually does. But he may not -- I think
23 I can conceive of a situation that somebody doesn't think that
24 they discriminate, subjectively doesn't think that they
25 discriminate, but objectively they may. Nobody likes to think

1 they discriminate.

2 MR. SCHONMAN: Very well, Your Honor. The Bureau's
3 next objection appears on page 3, paragraph 6. And the
4 objection goes to relevancy, Your Honor.

5 JUDGE STEINBERG: Mr. Schattenfield?

6 MR. SCHATTENFIELD: I really don't know how to answer
7 that. He is telling about his employment practices and why
8 there were so many people at the beginning. He can't drop a
9 little shovel in here and take one sentence out of context.
10 What this gentleman, Mr. Bramlett, is doing is explaining from
11 the start of this license period the situation at the station
12 and the job openings and what he had to do to get people to
13 work there. And it is all part of the whole story. You can't
14 pull things out. That is the -- the relevance is, that is the
15 story of the station and its hires and jobs openings and the
16 problems that he had early on and what he did.

17 MR. SCHONMAN: Your Honor, I would submit that the
18 coverage of the station and the salaries that are paid to
19 employees has little, if anything, to do with the recruiting
20 efforts that a licensee makes and certainly has nothing to do
21 with lack of candor or misrepresentation.

22 MR. SCHATTENFIELD: It has to do with his EEO program,
23 Counselor.

24 JUDGE STEINBERG: I will overrule the objection. I
25 consider this background as to what type of station it is and

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1 what happened when. And let me just say that in making these
2 rulings it is impossible for me to remove from my mind state-
3 ments that I have read in the motion for summary decision and
4 the opposition to the motion for summary decision. So I think
5 I know how this is tied in with Mr. Schattenfield calls the
6 whole story. And I look at this as background, and I don't
7 see any harm in its being there. And, you know, I will say
8 that candidly, that I can't really -- this is not the type of
9 thing that I can just put the motion for summary decision and
10 the opposition out of my mind and rule as if I had never read
11 them. Because I did read them, and I know what one side's
12 arguments are going to be and I know what the other side's
13 arguments are going to be, and I basically want to preserve a
14 record. I want to build a record that is going to allow
15 everybody to argue anything that they think is relevant. And
16 that might not be the right thing to do, but I can't do -- I
17 don't think I can do it otherwise.

18 MR. SCHONMAN: The Bureau's next objection is on page
19 5, the second line from the top, the phrase "and well known in
20 the local black community." And the Bureau submits that
21 Mr. Bramlett does not have the competence to testify to that
22 effect.

23 MR. SCHATTENFIELD: I think that goes to competency.
24 Mr. Bramlett runs a radio station in the community. He has
25 done things with the black community. If the Bureau feels he

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- 1 is not competent, I think that is subject for cross-
- 2 examination to show that he isn't competent. But it is not --